

ERIC C. BELLAFRONTO, Bar No. 162102
ebellafronto@littler.com
ADAM J. FISS, Bar No. 211799
afiss@littler.com
LITTLER MENDELSON
A Professional Corporation
50 West San Fernando Street
14th Floor
San Jose, CA 95113.2303
Telephone: 408.998.4150

DANIEL M. REILLY, Pro Hac Vice
DReilly@litigationcolorado.com
KENT C. MODESITT, Pro Hac Vice
KModesitt@litigationcolorado.com
REILLY POZNER & CONNELLY, LLP
511 Sixteenth Street, Suite 700
Denver, CO 80202
Telephone: 303.893.6100

Attorneys for Plaintiff
VARIABLE ANNUITY LIFE INSURANCE
COMPANY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

VARIABLE ANNUITY LIFE
INSURANCE COMPANY,

Plaintiff,

v.

RICK BOYNTON and DOES 1 through
25,

Defendants.

Case No. C06-04477 RMW

**STIPULATION AND ~~PROPOSED~~
PROTECTIVE ORDER AS
MODIFIED BY THE COURT.
AND ADDENDUM THERETO**

Plaintiff Variable Annuity Life Insurance Company (hereinafter "Plaintiff" or
"VALIC") and Defendant Rick Boynton (hereinafter "Defendant"), anticipate seeking and/or
disclosing in the course of discovery information, which may be privileged, confidential, or
proprietary. In order to facilitate discovery of such information while concurrently providing
protection to the party disclosing such information, the parties hereto have agreed to enter into a
Stipulated Protective Order (hereinafter "Order") limiting the disclosure of such information

STIPULATION AND ~~PROPOSED~~

Case No. C06-04477 RMW

consistent with the terms set forth herein. The parties further acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards that will be applied when a party seeks permission from the court to file material under seal.

1. The parties may designate as "CONFIDENTIAL" or as "ATTORNEY'S EYES ONLY" any document, thing, testimony, information, material or other information derived therefrom, disclosed through formal or informal discovery or otherwise in the course of this litigation as hereinafter set forth. "CONFIDENTIAL" ^{information means} or "ATTORNEY'S EYES ONLY" ^{information or tangible things that qualify for protection} information includes information relating to third parties to this lawsuit, trade secrets, confidential under standards developed under FRCP 26(c). See business or financial information the disclosure of which may have the effect of causing harm to the competitive position of VALIC or Defendant. ^{Addendum hereto, PVT} Such designation shall subject the information produced or provided under said designation to the provisions of this Confidentiality Agreement.

2. Confidential documents shall be so designated by stamping copies of the document produced to a party with the legend "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY." Stamping the legend "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY" on the cover of any multi-page document shall designate all pages of the document as confidential, unless otherwise indicated by the producing party. Blanket-designation of documents or information as "CONFIDENTIAL," or "ATTORNEY'S EYES ONLY," en masse and/or without regard to the specific contents of each document or piece of information is prohibited.

3. ~~As a general guideline,~~ ^{PVT} Information or materials designated as "ATTORNEY'S EYES ONLY" shall be ^{extremely sensitive} ~~those trade secrets defined by California Civil Code section 3426.1(d) or documents or information which are of a proprietary business or technical nature that non-party would create a substantial risk of serious~~ "CONFIDENTIAL" information whose disclosure to another party or documents or information which are of a proprietary business or technical nature that non-party would create a substantial risk of serious injury that cannot be avoided by means less restrictive of a party's ability to assist, or receive assistance from, ^{counsel.} ~~the proprietary rights thereto or might reasonably pose a commercial disadvantage to the producing party and must be protected from disclosure.~~ ^{PVT}

4. Testimony taken at a deposition, ~~conference, hearing or trial~~ ^{PVT} may be designated as "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY" by making a statement to that

LITTLER MENDELSON
3000 California Street, Suite 200
San Francisco, CA 94104

STIPULATION AND [PROPOSED]

2. Case No. C06-04477 RMW

effect on the record at the deposition or other proceeding or such designation may be made within twenty (20) court days after the receipt of the transcript. Transcripts will be treated as confidential for the 20-day period. Arrangements shall be made with the court reporter taking and transcribing such proceeding to separately bind such portions of the transcript containing information designated as "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY," and to label such portions appropriately.

5. Material designated as "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY" under this Protective Order, the information contained therein, and any summaries, copies, abstracts, or other documents derived in whole or in part from material designated as "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY" shall be used only for the purpose of the prosecution, defense, or settlement of this action, and for no other purpose.

6. Access to any "CONFIDENTIAL" document, thing, testimony, information, material or other information derived therefrom, produced pursuant to this Protective Order may be disclosed or made available only to: the Court; the parties; to counsel for a party (including the paralegal, clerical, and secretarial staff employed by such counsel); and to the "qualified persons" designated below:

- (a) experts or consultants (together with their clerical staff) retained by such counsel to assist in the prosecution, defense, or settlement of this action;
- (c) court reporter(s) employed in this action;
- (d) a witness at any deposition or other proceeding in this action; and
- (e) any other person as to whom the parties in writing agree. The parties agree that they will act in good faith regarding agreeing to allow "CONFIDENTIAL" documents, things, material to be disclosed to persons under this subsection.

Prior to receiving any "CONFIDENTIAL" document, thing, testimony, information, material or other information derived therefrom, each "qualified person" shall be provided with a copy of this Protective Order and shall execute a nondisclosure agreement in the form of Attachment A prior to receiving any "CONFIDENTIAL" material. The fully-executed Nondisclosure Agreement shall be retained by counsel for the party disclosing such "CONFIDENTIAL" material to the qualified

LITTLER MENDELSON
A PROFESSIONAL CORPORATION
55 West 42nd Street, New York, NY 10018-3630

STIPULATION AND (PROPOSED)

3. Case No. C06-04477 RMW

1 person.

2 7. Access to any "ATTORNEY'S EYES ONLY" document, thing, testimony,
3 information, material or other information derived therefrom, produced pursuant to this Protective
4 Order may be disclosed or made available only to: the Court; to counsel for a party (including the
5 paralegal, clerical, and secretarial staff employed by such counsel), and to the "qualified persons"
6 designated below:

- 7 (a) experts or consultants (together with their clerical staff) retained by such
8 counsel to assist in the prosecution, defense, or settlement of this action.
9 (b) court reporter(s) employed in this action;
10 (c) any other person as to whom the parties in writing agree. The parties agree
11 that they will act in good faith regarding agreeing to allow
12 "CONFIDENTIAL" documents, things, material to be disclosed to persons
13 under this subsection.

14 Prior to receiving any "ATTORNEY'S EYES ONLY" document, thing, testimony, information,
15 material or other information derived therefrom, each "qualified person" shall be provided with a
16 copy of this Protective Order and shall execute a nondisclosure agreement in the form of Attachment
17 A prior to receiving any "ATTORNEY'S EYES ONLY" material. The fully-executed
18 Nondisclosure Agreement shall be retained by counsel for the party disclosing such "ATTORNEY'S
19 EYES ONLY" material to the qualified person.

20 ^{PVT} 8. Where testimony at a deposition involves disclosure of "CONFIDENTIAL"
21 material, such deposition shall be taken only in the presence of the individuals identified in
22 paragraph 6. Where testimony at a deposition involves disclosure of "ATTORNEY'S EYES
23 ONLY" material, such deposition shall be taken only in the presence of the individuals identified in
24 paragraph 7.

25 9. Nothing herein shall impose any restrictions on the use or disclosure by a
26 party of ^{(see ¶ 13) PVT} ~~material obtained by such party independent of discovery in this action, whether or not such~~
27 ~~material is also obtained through discovery in this action, or from disclosing its own~~
28 "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY" material as it deems appropriate; ^{PVT} ~~provided,~~ NT

LITTLER MENDELSON
A. Philip Harrison, Esq.
30 West San Fernando Street

STIPULATION AND [PROPOSED]

4. Case No. C06-04477 RMW

~~however, if a party has obtained any such material pursuant to a separate confidentiality agreement or other legal obligation of confidentiality, that party shall continue to adhere to such confidentiality obligations and, in addition, such materials shall be covered by this Protective Order.~~ PVT

10. Without written permission from the designating party or a court order secured after appropriate notice to all interested persons, a party may not file in the public record in this action any document, thing, testimony, information, material or other information derived therefrom, designated as "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY." All document, thing, testimony, information, material or other information derived therefrom designated as "CONFIDENTIAL" or "ATTORNEY'S EYES" only may only be filed under seal and only after that party has complied with Civil Local Rule 79-5. See Addendum hereto. PVT

11. If a party determines certain documents or testimony should have been designated "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY," but were not so designated, the producing party shall notify opposing counsel in writing. Such material shall then be treated as "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY" subject to the party's rights under this Protective Order.

12. In the event that any "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY" document, thing, testimony, information, material or other information derived therefrom, is used in any court proceeding in this action, it shall not lose its confidential status through such use and the party using such information shall take all reasonable steps to maintain its confidentiality during such use. unless publicly disclosed PVT

13. (a) This Protective Order shall be without prejudice to the right of the parties to: (i) bring before the Court at any time the question of whether any particular document or information is "CONFIDENTIAL," "ATTORNEY'S EYES ONLY," or whether its use should be restricted; or (ii) present a motion to the Court under Fed. R. Civ. Proc. 26(c) for a separate protective order as to any particular document or information, including restrictions differing from those as specified herein. This Protective Order shall not be deemed to prejudice the parties in any way in any future application for modification of this Protective Order.

(b) A party that elects to initiate a challenge to a confidentiality designation must

LITTLE WENDELSON
A. WENDELSON, Esq.
30 West 2nd Avenue, Suite 200
New York, NY 10011

STIPULATION AND (PROPOSED)

5. Case No. C06-04477 RMW

do so in good faith and must begin the process by conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) with counsel for the party designating the documents as confidential. In conferring, the challenging party must explain the basis for its belief that the confidentiality designation was not proper and must give the designating party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A challenging party may proceed to the next stage of the challenge process only if it has engaged in this meet and confer process first.

(c) A party that elects to press a challenge to a confidentiality designation after considering the justification offered by the designating party may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) that identifies the challenged material and sets forth in detail the basis for the challenge. Each such motion must be accompanied by a competent declaration that affirms that the movant has complied with the meet and confer requirements imposed in the preceding paragraph and that sets forth with specificity the justification for the confidentiality designation that was given by the designating party in the meet and confer dialogue.

(d) The burden of persuasion in any such challenge proceeding shall be on the designating party. Until the court rules on the challenge, all parties shall continue to afford the material in question the level of protection to which it is entitled under the producing party's designation.

14. This Protective Order is entered solely for the purpose of facilitating the exchange of documents and information between the parties to this action without involving the Court unnecessarily in the process. Nothing in this Protective Order nor in the production of any information or document under the terms of this Protective Order nor any proceedings pursuant to this Protective Order shall be deemed to have the effect of any admission or waiver by either party or of altering the confidentiality or non-confidentiality of any such document or information or altering any existing obligation of any party ~~or the absence thereof~~ *pv*

15. This Protective Order shall survive the final termination of this action, to the


STIPULATION AND (PROPOSED)

6. Case No. C06-04477 RMW

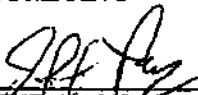
7. Case No. C06-04477 RMW

Protective Order, and in the event that a party does so, the respondent person subject to the provisions of this Protective Order shall not employ as a defense thereto the claim that the aggrieved party possesses an adequate remedy at law. However, the right to apply to obtain injunctive relief does not preclude any aggrieved party from obtaining money damages for violation or threatened violation of this Protective Order.

Dated: October 24, 2006


 ADAM J. FISS
 LITTLER MENDELSON
 A Professional Corporation
 Attorneys for Plaintiff
 VARIABLE ANNUITY LIFE INSURANCE
 COMPANY

Dated: October 24, 2006


 JEFF PARK
 PHILLIP J. GRIEGO & ASSOCIATES
 A Professional Corporation
 Attorneys for Defendant
 RICK BOYNTON

IT IS SO ORDERED.

Dated: 11/14/06


 UNITED STATES DISTRICT COURT JUDGE
~~MAGISTRATE~~

LITTLER MENDELSON
 2 Prince Georges Boulevard
 4th Floor, 4th Floor Suite 400

STIPULATION AND [PROPOSED]

8. Case No. C06-04477 RMW

Attachment A

NONDISCLOSURE AGREEMENT

I, _____, do solemnly swear that I am fully familiar with
 the terms of the Stipulation and Protective Order entered in *as modified by the court, and Addendum* *Variable Annuity Life Insurance* *thereof*
P/1
 Company v. Rick Boynton, United States District Court for the Northern District of California, Civil
 Action No. C06-04477 RMW, and hereby agree to comply with and be bound by the terms and
 conditions of said Order unless and until modified by further order of this Court. I hereby consent to
 the jurisdiction of said Court for purposes of enforcing this Protective Order.

Dated: _____

Signed: _____

Name: _____

Address: _____

Firmwide: 81453416.1 044844.1005

LITTLER MENDELSON
 A PROFESSIONAL CORPORATION
 10000 Wilshire Blvd.
 Suite 2000
 Beverly Hills, CA 90212

STIPULATION AND [PROPOSED]
 PROTECTIVE ORDER

9. Case No. C06-04477 RMW

ADDENDUM TO PROTECTIVE ORDER PVT

Variable Annuity Life Ins. Co. v. Rick Boynton
Case No. C06-4477 RMW (PVT)

IT IS HEREBY ORDERED as follows:

DESIGNATION OF DOCUMENTS

Before designating any specific information "Confidential" or "Attorney's Eyes Only," the designating party's counsel shall make a good faith determination that the information warrants that level of protection under Rule 26(c) of the Federal Rules of Civil Procedure. Counsel should note that not all confidential documents warrant the "Confidential -- Attorney's Eyes Only" level of protection. This heightened level of protection is appropriate only for the most highly sensitive information; it is warranted only if "the potential injury is substantial and cannot be prevented through the use of any device less restrictive of a party's access to his lawyer." *See, Doe v. Dist. of Columbia*, 697 F.2d 1115, 1120 (D.C. Cir. 1983). Thus, the court expects the parties to use this designation sparingly. *See, e.g., THK America v. NSK Co., Ltd.*, 157 F.R.D. 637 (N.D. Ill. 1993) (revoking party's right to use "attorney's eyes only" designation as sanction for bad faith overuse of that designation).

Counsel are cautioned that over-designation of documents may result in sanctions. The filing of documents designated "Confidential" or "Attorney's Eyes Only" puts an additional burden on the court and opposing parties. Often the party filing the document is not the designating party. In that situation the party does not have the option to unilaterally de-designate documents before submitting them to the court, and has no choice but to request they be filed under seal. Over-designating documents can thus result in unnecessary work for the court in sorting the documents that deserve sealing from those that do not, as well as additional work for the parties who must then re-file public versions of the non-confidential documents. The best way to avoid this result is for counsel to use best efforts to make appropriate designations at the outset, and to promptly de-designate a document when it comes to counsel's attention that the

1 document is over-designated.

2 REQUESTS TO FILE DOCUMENTS UNDER SEAL

3 Any party wishing to file any document(s) designated "Confidential" or "Attorney's Eyes
4 Only" shall lodge the document(s) along with a Request for Sealing pursuant to Civil Local Rule
5 79-5. The document(s) shall be submitted in an appropriate envelope labeled with the case name
6 and number and the title of the document(s). Unless otherwise ordered by the Court, **WITHIN**
7 **FIVE DAYS AFTER ANY REQUEST FOR SEALING IS FILED**, any party claiming
8 confidentiality for the information for which sealing is requested shall serve and file
9 declaration(s) from competent witnesses setting forth specific facts demonstrating that sealing is
10 warranted under rule 26(c). The parties are cautioned that "Broad allegations of harm, however,
11 unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test."
12 *Beckman Indus., Inc. v. International Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992). Further, the
13 factual showing must address separately each portion of the materials that the party contends
14 warrants protection. See Civil Local Rule 79-5.

15 Dated: 11/14/06

16 
17 PATRICIA V. TRUMBULL
18 United States Magistrate Judge
19
20
21
22
23
24
25
26
27
28